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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,635	07/15/2003	Klaus R. Moeller	23390-000120/US	5657
30593	7590	09/10/2004	EXAMINER	
HARNES, DICKEY & PIERCE, P.L.C. P.O. BOX 8910 RESTON, VA 20195			FAULK, DEVONA E	
			ART UNIT	PAPER NUMBER
			2644	
DATE MAILED: 09/10/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,635

Applicant(s)

MOELLER ET AL.

Examiner

Devona E. Faulk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) *
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7,12,13,18,19,21-28 of copending Application No. 10/646734. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications claim a sound masking system and a networked sound masking system. Claims 1-22 are overall broader than claims 1-7,12,13,18,19,21-28 and anything that would read on the narrower claims would read on the broader claims of application 09/618635

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 1-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 10-12,17,21 of copending Application No. 09/791802. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications claim a sound masking

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system and a networked sound masking system. Claims 1-22 are overall narrower than claims 1-7, 10-12, 17, 21 and anything that would read on the narrower claims would read on the broader claims of application 10/618635.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claim 1-14, and 18-22** are rejected under 35 U.S.C. 102(b) as being anticipated by Ritter (U.S. Patent 4,686,693).

Regarding **claim 1**, Ritter discloses a sound masking system comprising a communication network spanning at least a portion of said physical environment (Figure 5, claim 7); a plurality of sound masking units (Figure 1), some of said sound masking units including a communication interface for coupling said sound masking units to said communication network for receiving signals over said communication network (Figure 1, column 4, line 65-column 5, line 7; claim 1); a control unit, said control unit having a communication interface for coupling said control unit to said communication network for transmitting signals over said communication network to said sound masking units, and said signals including control signals for selectively controlling the operation of said sound masking units one or more sound masking

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signals for producing a sound masking output at one or more of said selected sound masking units (Figure 1; column 4, line 65-column 5, line 7; claim 1).

Regarding **claim 2**, Ritter discloses wherein said communication interface comprises an address component for recognizing signals intended for the sound masking unit associated with said address component (column 8, lines 32-46).

Regarding claim 3, Ritter discloses wherein said control unit includes an address generator for assigning addresses to said sound masking units. All elements of claim 3 are comprehended by claim 2. Claim 3 is rejected for reasons given above apropos of claim 2.

All elements of **claim 4** are comprehended by claim 3. Therefore, claim 4 is rejected for reasons stated above apropos of claim 2.

All elements of **claim 5** are comprehended by claim 1. Ritter discloses a computer (controller , 100) and a control unit as claimed. (column 5, lines 45-63). Therefore, claim 5 is rejected for reasons given above apropos of claim 4.

All elements of **claim 6** are comprehended by claim 5. Therefore, claim 6 is rejected for reasons given above apropos of claim 5.

Regarding **claim 7**, Ritter discloses wherein said computer (remote controller) includes a component (sound level meter, 104; column 7, lines 10-16) for receiving sound level readings for the physical environment and a component for receiving sound level readings for the physical environment and a component for generating an equalizer adjustment signal derived from said sound level readings, and said control unit being responsive to said equalizer adjustment signal for generating said spectral control signal (column 7, lines 11-17; column 8, lines 5-12).

All elements of **claim 9** are comprehended by claim 1. Therefore, claim 1 is rejected for reasons given above apropos of claim 1.

All elements of **claim 10** are comprehended by claim 9. Therefore, claim 10 is rejected for reasons given above apropos of claim 9.

Regarding **claim 11**, Ritter discloses a sound-masking module for generating one or more of said sound masking signals for transmission to selected ones of said sound masking units (Figure 5; column 7, line 56-column 8, line 4).

Regarding **claim 12**, Ritter discloses a paging component as claimed (Figure 6; column 8, lines 26-52).

All elements of **claim 13** are comprehended by claim 12. Therefore, claim 13 is rejected for reasons given above apropos of claim 12.

All elements of claim 14 are comprehended by claim 2. Therefore, claim 14 is rejected for reasons given above apropos of claim 2.

Regarding **claim 15**, Ritter discloses a sound masking system comprising a communication network spanning at least a portion of said physical environment (Figure 1; Figure 5); a plurality of sound masking units, some of said sound masking units including a communication interface for coupling said sound masking units to said communication network, a programmable controller for controlling operation of said sound masking unit, and said programmable controller being coupled to said communication network for receiving signals from said communication network (Figure 5, Figure 1; column 4, line 65-column 5, line 7; claim 1); a control unit, said control unit having a communication interface for coupling said control unit to said communication network for transmitting signals over said communication network to

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said sound masking units, and said signals including control signals and at least one audio signal, said audio signal comprising a sound masking signal, a paging signal or the sound masking signal mixed with the paging signal (Figure 1; column 4, line 65-column 5, line 7; claim 1); wherein said masking unit includes an equalizer for receiving said audio signal and generating an audio output signal with a predetermined contour, and an output amplifier for amplifying said audio output signal, and said programmable controller including a component for altering the contour of said audio output signal in response to a control signal from said control unit (column 7, lines 10-16).

All elements of **claim 16** are comprehended by claim 15.

All elements of **claim 17** are comprehended by claim 16.

All elements of **claim 18** are comprehended by claim 17.

Regarding claim 19, Ritter discloses a communication network spanning at least a portion of said physical environment (Figure 5); a plurality of sound masking units (Figure 5), at least some of said sound masking units including a communication interface for coupling to said communication network and a speaker, said communication interface having an address component for recognizing control signals and an audio signal for announcement at said speaker associated with said address component, said audio signal comprising a sound masking signal, or a paging signal mixed with said sound masking signal (column 8, lines 32-46); a control unit having a communication interface for coupling said control unit to said communication network for transmitting signals over said communication network to said sound masking units associated with said address component, and said signals including one or more of said audio signals and control signals for selectively controlling the operation of said sound masking units (Figure 1;

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column 4, line 65-column 5, line 7; claim 1); said control unit including an address generator for assigning addresses to said sound masking units (Figure 1, column 8, lines 32-46).

All elements of **claim 20** are comprehended by claim 19. Therefore, claim 20 is rejected for reasons given above apropos of claim 19.

All elements of **claim 21** are comprehended by claim 20 (column 8, lines 26-32). Therefore, claim 21 is rejected for reasons given above apropos of claim 20.

All elements of **claim 22** are comprehended by claim 21 (column 8, lines 26-32). Therefore, claim 22 is rejected for reasons given above apropos of claim 21.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Ritter (U.S. Patent 4,686,693) in view of Eatwell (U.S. Patent 6,594,365)

Claim 8 claims the sound masking system of claim 7, wherein said component for receiving sound level readings comprises a microphone. As stated above apropos of claim 7, Ritter meets all elements of that claim. Therefore, Ritter meets all elements of claim 8 with the exception of the claimed matter. Eatwell discloses a microphone used to receive sound level readings (column 4, lines 28-32). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use Eatwell's concept of a microphone to receive sound level reads in order to measure the residual noise.

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Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure

U.S. Patent Application to Hendricks et al. discloses an architectural sound enhancement system

U.S. Patent Application to Horrall et al. discloses a sound masking system.

U.S. Patent Application to Roy et al. discloses an enhanced sound processing system for use with sound radiators.

U.S. Patent 6,389,139 to Curtis et al. discloses a powered volume control for distributed audio system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devona E. Faulk whose telephone number is 703-305-4359. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on 703-305-4386. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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FORESTER W. ISEN
SUPERVISORY PATENT EXAMINER